IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 660 OF 2005

Prabhudas B. Salla & Ors ...Petitioners

Versus

M/s. Apigo Credit & Capital Pvt. Ltd. & Anr ...Respondents

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Mr. Rohit Dandekar i/b Berarwalla & Co. Advocate for Petitioners

Mr.P.B. Naiknaware, Adv. for Respondent No.1.

Mr. V.B. Konde Deshmukh, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 31ST AUGUST, 2005

P. C.:-

1. Heard the learned advocate for the petitioners, the learned advocate for the respondent No.1 i.e. original complainant and the learned A.P.P. for the State.

2. The petitioners have prayed for quashing of process issued against them in Criminal Case No. 28/S/2002 which is pending in the Court of learned Metropolitan Magistrate, 18th court, Girgaon, Mumbai. In the said case, process has been issued against the petitioners under Section 138 of Negotiable Instruments Act.

3. The petitioners had preferred an application for recalling of process before the learned Magistrate. The said application came to be rejected. Being aggrieved by the said order, revision came to be preferred before the Sessions Court. The Sessions Court by order dated 8.10.2004 rejected the said revision. In view of the decision of the Supreme Court in the case **Adalat Prasad V/s. Rooplal Jindal & Ors (2004) 7 SCC 338,** it is quite clear that the Magistrate has no power to recall the process. In such case, I am not inclined to interfere with the order of the learned Magistrate rejecting the application for recall of process or the order of the learned Sessions Judge rejecting the revision of the petitioners preferred in respect of the order of the Magistrate rejecting the application for recall of process.

4. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, in my opinion, the petitioners have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the petitioners prefer revision before the concerned Sessions Court against

the order of the Magistrate issuing process.

5. Liberty is granted to the petitioners to prefer revision before the concerned Sessions Court. The learned advocate for the petitioners states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks from today. The learned advocate for the respondent No.1 i.e. original complainant fairly states that no objection would be raised in respect of delay in filing revision before the learned Sessions Judge.

6. On the necessary revision being preferred by the petitioners before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

7. Writ Petition is disposed of.

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